



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case: 14-00509
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

02/26/2015

Remand Decision

DAM, Shari, Administrative Judge:

Background of Case

On October 8, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 17, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

On April 24, 2014, Applicant answered (Answer) the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On June 24, 2014, Department Counsel prepared a File of Relevant Material (FORM), containing five Items, and mailed Applicant a complete copy on June 30, 2014. Applicant received the FORM on July 10, 2014, and had 30 days from its receipt to file objections and submit additional information. Applicant submitted additional information within the time period. Department Counsel had no objection to the information. I marked that submission as Applicant Exhibit (AE) A and admitted it into the record. On August 25, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

On September 30, 2014, I issued a Decision denying Applicant's request for a security clearance, on the basis that Applicant mitigated security concerns raised under Guideline E, Personal Conduct, but not Guideline H, Drug Involvement. Applicant appealed. On January 13, 2015, the Appeal Board remanded the case to me to issue a Decision in accordance with the Directive. Specifically, the Appeal Board noted that the Decision found that Appellant began working for a defense contractor in June 2012 rather than June 2013 as supported by the record. The Appeal Board limited the remand to that fact, the resulting finding that his marijuana use continued for ten months after he began working for a defense contractor, and "the emphasis that the Judge placed on these findings" in the analysis of the security concerns raised under Guideline H. I received the Remand Order and case file on January 15, 2015.

Remand Findings of Fact

In his Answer, Applicant admitted the two allegations contained in Paragraph 1 of the SOR, related to Drug Involvement. His admissions are incorporated into the findings of fact. He did not admit or deny the allegations in Paragraph 2 of the SOR. (Item 3.)

Applicant is 24 years old. He graduated from high school in June 2008. He graduated from college in August 2012. He began a position with a defense contractor in June 2013. In October 2013 he submitted a security clearance application (e-QIP). (Item 4.)

In his e-QIP, Applicant disclosed that he used marijuana from September 2008 to April 2013. In September 2008, while in college, he began using marijuana. He purchased marijuana from November 2010 until December 2011. (Item 4.) In his April 28, 2014 Answer, he asserted that while in college he used marijuana infrequently and for recreational purposes. He claimed he had not used marijuana for the past year, which he stated is an "appropriate period of abstinence." (Item 3.) He moved and no longer associated with the individuals with whom he used the illegal substance. (Item 3; AE A.) In his response to the FORM, Applicant stated he has continued to abstain from use of marijuana. He is passionate about his position, in which he works with military service members and their families. He would agree to an automatic revocation of his security clearance should he abuse illegal drugs in the future. (AE A.)

During an interview with a Government investigator in November 2013, Applicant stated he has never been arrested for using marijuana nor had a positive drug screening. He further stated to the Government investigator that there is nothing in his background or regarding his character that could result in exploitation, blackmail, or coercion, including his illegal use and purchase of marijuana. (Item 3.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H, Drug Involvement

The security concern pertaining to Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The potentially disqualifying conditions established by the evidence in this case are:

(a) any drug abuse (see above definition); and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admitted that he illegally used marijuana from September 2008 until April 2013. He purchased it between November 2010 and December 2011. The evidence raises both disqualifying conditions.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut or prove mitigation of the resulting security concern under this guideline. AG ¶ 26 includes four examples of conditions that could mitigate the security concern arising from illegal drug use:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence;
- (4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 25(a) does not apply because Applicant used an illegal substance, marijuana, from September 2008 to April 2013. He stated he stopped using marijuana two months before starting employment with a defense contractor, but provided no independent evidence supporting his assertion. His four-year history of illegal behavior, which continued up to two months before starting his present position, casts doubt on his trustworthiness and judgment.

In his Answer and response to the FORM, Applicant asserted he has not used marijuana for over a year. He said he no longer associates with individuals who use marijuana, supporting a limited application of AG ¶ 25(b)(1). He did not provide information regarding whether he still frequents the places where he used marijuana. Insufficient evidence was submitted to warrant the application of AG ¶¶ 25(b)(2) and (3). Applicant's written agreement to have his security clearance revoked for future illegal drug abuse merits limited mitigation under AG ¶ 25(b)(4). The record does not contain evidence to support the application of AG ¶ 25(c). Applicant has not participated in substance abuse treatment or received a favorable prognosis by a qualified medical professional, which evidence is necessary for the application of AG ¶ 25(d).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Paragraph 2 of the SOR alleges that Applicant's illegal purchase and use of marijuana raises security concerns under this guideline. While all misconduct involves elements of questionable judgment, Applicant's history of illegal drug involvement is appropriately raised under Guideline H. Paragraph 2 of the SOR did not recite any additional facts that would serve as a basis for alleging security concerns under Guideline E. Hence, allegations raised under this guideline are found in Applicant's favor.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant is a 24-year-old employee of a defense contractor, who illegally used marijuana between 2008 and 2013. His personal assertions that he will not use marijuana in the future, and has not used it for over a year, are not sufficiently persuasive to outweigh the evidence documenting that he used marijuana for over four years; purchased it for a year; and ceased using it two months before starting new employment that required a security clearance. There is insufficient evidence corroborating that he no longer uses illegal substances or that he does not have a substance abuse problem.

Overall, the record evidence leaves me with questions as to Applicant's judgment, eligibility, and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his drug involvement. The allegations raised under the Personal Conduct guideline are found in his favor.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge